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ABSTRACT

This chapter reports on legislative activity and court litigation during 1983 on issues relating to school prayer. Eighteen bills and resolutions have been introduced in the 98th Congress on this issue; 7 relate to voluntary prayer, 4 to equal access, and 3 are concurrent resolutions, not legislative in nature, expressing the belief that periods of silence in public school programs do not violate the constitution. A Senate resolution proposing a school prayer amendment has been introduced at the insistence of President Reagan, but stands little chance of passage, owing to strong opposition by most mainline religious groups as well as civil liberties organizations. Equal access measures, allowing students to meet voluntarily for religious purposes, have a better chance of passage. Initiatives to limit federal court jurisdiction over school prayer have been introduced in both the Senate and the House, but thus far have met with little success. The federal courts, during 1983, overturned several state efforts to establish prayer in schools. In "Jaffree vs. Wallace," the Eleventh Circuit Court for Appeals ruled against two Alabama statutes permitting teacher-led school prayer. Likewise, in cases in New Mexico and New Jersey, courts ruled against statutes allowing for a "period of silence" on the grounds that they evinced a religious purpose. Other religious practices associated with public schools were prohibited by federal district courts in Georgia and California, though in Pennsylvania, a voluntary religious group was permitted to meet in a semipublic forum. The equal access issue is likely to become more prominent during 1984. (TE)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Shall We Pray? The Latest Word from Legislatures and Courts

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In the first three-quarters of 1983, a considerable amount of legislative and judicial activity was initiated regarding prayer, most of which concerned the relatively new issue of "equal access" for voluntary student prayer groups and the various direct and indirect attempts to return prayer to public schools and colleges. The report herein, however, is of necessity incomplete. Quite apart from the natural inconclusivity of the prayer issue itself, the 98th Congress had been in session for less than half a term in October of 1983; and while some important judicial controversies were resolved, others were yet to be decided. But the perennial issue of the appropriate place of prayer in public life—and especially its place in the process of socialization and enlightenment called education—had already been roundly debated.

EA 016 755

CONGRESSIONAL PRAYER INITIATIVES: 1983

In the first nine months of the 98th Congress (January-September, 1983) a total of eighteen bills and resolutions were introduced in Congress relating to prayer, periods of silence, and "equal access" for voluntary religious groups in public educational institutions. Eleven of these would affect public institutions at all levels,[1] six would affect only

1. All bills and resolutions listed in the first ten notes are from the 98th Congress, 1st Session, 1983. S. 88, S. 784, S. 785, S. 1059, S.J. Res. 73, H.R. 183, H.R. 253, H.R. 525, H.R. 2732, H.R.J. Res. 104, H.R.J. Res. 288.

public elementary and secondary schools,[2] and one would affect only public high schools.[3] Seven of the bills and resolutions relate to voluntary prayer,[4] four relate to equal access,[5] and cour concern both the prayer and equal access issues.[6] An additional three measures are House concurrent resolutions, which are not legislative in nature, and therefore seek only to express the "sense of Congress" that periods of silence in public school programs (to be used for prayer, mediation, or contemplation) are not violative of the Constitution.[7]

Of the threee concurrent resolutions introduced in the House, one suggests that "public school authorities should recognize the value of . . . a short period of silence to be used at the discretion of the individual student;"[8] and two others admonish public school officials to encourage periods of silence in recognition of the "historic importance of religion to our civilization."[9] If these concurrent resolutions were to pass both houses of Congress, they would be effective immediately. Presidential approval is not necessary.

With regard to bills and joint resolutions (which include proposed constitutional amendments), it is too early to know whether any will win approval of both houses in the remainder of the 98th Congress, which extends through 1984. By the end of September 1983, three initiatives had been reported out of the Senate Judiciary Committee and were awaiting action by the full Senate.[10] Two of these, S.J. Res. 73 and S.J. Res. __ (reported in unnumbered form), propose constitutional amendments that would allow for (1) "individual or group prayer in public schools" (excluding government composed prayers)[11] and for (2) "individual or group silent prayer or meditation" and "equal access . . . by all voluntary student groups" respectively. Three joint resolutions in the House, also proposing constitutional amendments related to school prayer, had not been reported to the full House by the end of September.[12]

The first Senate resolution proposing a school prayer amendment was introduced at President Reagan's request by Strom Thurmond, a

2. S. 425, S.J. Res. __, H.R.J. Res. 133, H.R. Con. Res. 38, H.R. Con. Res. 53, H.R. Con. Res. 76.
3. S. 815.
4. S. 88, S.J. Res. 73, H.R. 183, H.R. 253, H.R. 525, H.R.J. Res. 104, H.R.J. Res. 288.
5. S. 425, S. 815, S. 1059, H.R. 2732.
6. S. 784, S. 785, S.J. Res. __, H.R.J. Res. 133.
7. H.R. Con. Res. 38, H.R. Con. Res. 53, H.R. Con. Res. 76.
8. H.R. Con. Res. 76.
9. H.R. Con. Res. 38, H.R. Con. Res. 53.
10. S. 1059, S.J. Res. 73, S.J. Res. __.
11. Amendment added by Strom Thurmond (R-S.C.) on July 14, 1983. *Prayer Debate Shifts to Full Senate*, 41 CONG. Q. WEEKLY REP. 1465, 1465 (1983).
12. H.R.J. Res. 104, H.R.J. Res. 133, H.R.J. Res. 288, 98th Cong., 1st Sess. (1983).

Republican senator from South Carolina; the second, widely referred to as the "Hatch proposal," was also officially introduced by Thurmond. Senator Hatch's proposal evolved as a compromise measure following hearings on President Reagan's proposed amendment by the Senate Subcommittee on the Constitution, chaired by Hatch.[13]

The Senate Subcommittee, which had approved both amendments on June 9, 1983, clearly favored Senator Hatch's more moderate proposal[14] because it concerned silent prayer rather than "voluntary prayer," which could be audible or silent. While at least some subcommittee members believed that President Reagan's proposal would not pass the Senate Judiciary Committee,[15] Senator Thurmond said only that it had "no chance of being favorably reported" to the entire Senate.[16] Senator Thurmond's prediction turned out to be correct. Although both prayer resolutions were reported out of the Judiciary Committee, neither was recommended, which was called "a setback for the school prayer movement."[17]

President Reagan has been the strongest supporter of recent initiatives to amend the United States Constitution, saying in his 1983 State of the Union Address that one of his four major education goals would be to seek a constitutional amendment permitting school prayer. "God should never have been expelled from America's classrooms in the first place."[18] In a May radio address to the nation, he said:

> We must move forward again by returning to the sound principles that never failed us when we lived up to them. Can we not begin by welcoming God back into our schools again and by setting an example for our children by striving to abide by His Ten Commandments and the Golden Rule? We've sent an amendment to the Congress that will permit voluntary prayer in school again.[19]

But despite the support of the Reagan administration, the Moral Majority, the Christian Broadcast Network, and others,[20] there has been

13. Cohodas, *Two School Prayer Measures Approved by Senate Panel*, 41 CONG. Q. WEEKLY REP. 1144, 1144 (1983).
14. School Law News, June 17, 1983, at 7-8.
15. *Two School Prayer Measures Approved by Senate Panel*, 31 CONG. Q. WEEKLY REP. 1144, 1144 (1983).
16. School Law News, June 17, 1983, at 8.
17. *Id.*, July 29, 1983, at 6.
18. Reagan, *The State of the Union Address*, delivered before a joint session of the Congress (January 25, 1983). 19 weekly compilation of Presidential Documents 105, 109 (1983). The other major goals include improvement in math and science instruction, education savings accounts, and tuition tax credits.
19. Reagan, *The President's Radio Address to the Nation on Education*, Am. Educ., May 1983, at 2.
20. Cohodas, *Senate Panel Bows to Pressure; Postpones School Prayer Vote*, 41 CONG. Q. WEEKLY REP. 1051, 1051 (1983).

considerable controversy over proposals to amend the constitution to allow for prayer, both within and outside of Congress. The ACLU, the Lutheran Council, the American Jewish Congress, and most other mainline religious groups support neither amendment.[21] This controversy, along with lack of firm endorsement of either proposal by the Senate Judiciary Committee, makes the prospect for positive action by the full Senate uncertain.

At the end of September, 1983, while Senate consideration was pending on the alternative proposals for a constitutional amendment regarding school prayer, another religion bill was awaiting Senate action. The Equal Access Act,[22] which provides that "it shall be unlawful to deny equal access to students in public schools and public colleges who wish to meet voluntarily for religious purposes," was approved by the Senate Judiciary Committee on September 15, 1983, by an eleven to four vote.[23] Although the committee rejected an amendment to eliminate elementary schools from the bill's scope, it did agree to prohibit faculty participation.[24] A similar bill, which includes a provision for the withdrawal of federal funds, was introduced in the House in April,[25] and subcommittee hearings began in June. These equal access proposals are less controversial and thus have drawn less public attention than the proposed constitutional amendments, making their prospects for passage in the 98th Congress more favorable.

While equal access bills are a relatively new phenomenon, having appeared subsequent to the Supreme Court's 1981 decision in *Widmar v. Vincent*[26] (mandating equal access for religious groups at the University of Missouri at Kansas City based upon freedom of speech), five of the eighteen bills introduced early in the 98th Congress illustrate the recurring attempts to limit the jurisdiction of the federal courts. Two of these, originating in the Senate,[27] would withdraw Supreme Court and lower federal court jurisdiction over cases involving voluntary prayer, Bible reading, and religious meetings occurring in public schools and other public buildings. Three House bills[28] would likewise remove federal court jurisdiction over cases concerning voluntary prayer. None of the above initiatives had been reported to the full Senate or House by the end of September.

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21. *Id.* at 1144 (1983).
22. S. 1059, 98th Cong., 1st Sess. (1983).
23. *Religion and Schools*, 41 CONG. Q. WEEKLY REP. 1957, 1957 (1983).
24. *Id.*
25. H.R. 2732, 98th Cong., 1st Sess. (1983).
26. 102 S. Ct. 269 (1981).
27. S. 784, 98th Cong., 1st Sess. (1983), S. 785, 98th Cong., 1st Sess. (1983).
28. H.R. 183, 98th Cong., 1st Sess. (1983), H.R. 253, 98th Cong., 1st Sess. (1983).

Initiatives to limit federal court jurisdiction over school prayer have come primarily from Senator Jesse Helms, a North Carolina Republican, who has introduced such legislation on many occasions over the last decade.[29] The two identical Senate bills noted above were also introduced by Senator Helms, the first having been placed on the calendar in March,[30] and the second having been referred to the Senate Committee on the Judiciary in the same month.[31] Each is called the "Voluntary School Prayer Act of 1983," and each is similar to legislation sponsored by Senator Helms in the 96th Congress and in the 97th Congress.[32] The current Helms bills emphasize that jurisdictional limitations are meant to apply only to "voluntary" prayer. They are written to include "Bible reading" and "religious meetings in public schools or public buildings,"[33] representing a broadening of the intended scope of the initiatives over those introduced previously. Because more than a year remains in the 98th Congress, well over half the present term, it is possible that one or the other of these new bills will achieve equal or greater success than the 1979 Helms Prayer Bill[34] which passed the Senate but was never approved by the House Judiciary Committee.[35]

Legislation relating to school prayer which was introduced early in the 98th Congress is not radically different in intent or purpose from similar legislation introduced over the last twenty years. Media attention has rightfully been drawn to the proposed constitutional amendments, as the passage of any one of them would almost certainly lead to years of public controversy over ratification. The Helms proposal,[36] because of its focus on silent prayer, would likely be somewhat less controversial despite its opposition by many religious and civil rights groups. No less a figure than Paul A. Freund, Professor Emeritus of Harvard Law School, suggested in October that silent prayer or

29. *See* McClellan, *Congressional Retraction of Federal Court Jurisdiction to Protect the Reserved Powers of the States: The Helms Prayer Bill and A Return to First Principles*, 27 VILL. L. REV. 1019 (1981-82) (arguing that selective incorporation is a usurpation of democratic decisionmaking power and inherently anti-federalist). *See also*, Comment, *Restoring School Prayer by Eliminating Judicial Review: An Examination of Congressional Power to Limit Federal Court Jurisdiction*, 60 N.C. L. REV. 831 (1982).

30. S. 784, 98th Cong., 1st Sess. (1983).

31. S. 785, 98th Cong., 1st Sess. (1983).

32. S. 210, 96th Cong., 1st Sess. (1979), later attached to S. 450, 96th Cong., 1st Sess. (1979); S. 481, 97th Cong., 1st Sess. (1981).

33. S. 784, 96th Cong., 1st Sess. (1983); S. 785, 98th Cong., 1st Sess. (1983).

34. S. 450, 96th Cong., 1st Sess. (1979).

35. For comments by Senator Helms regarding S. 450 and S. 481, including remarks suggesting that the Supreme Court's school prayer decisions represented a "myopic and narrow view" of constitutional history and a "distortion" of constitutional intent, *see* 127 CONG. REC. S1281-1284 (daily ed. Feb. 28, 1980).

36. S.J. Res. __, 98th Cong., 1st Sess. (1983).

meditation might prove to be constitutional. "If one thinks of it as a free-exercise rather than an establishment problem turning on psychological coercion, a silent prayer not in unison, accompanied by other forms of private meditation, would not offend the Constitution."[37]

Of more immediate concern is the likelihood of passage of one of the equal access bills or one of the bills seeking to limit federal court jurisdiction over school prayers or prayer group meetings. As has been noted above, an equal access bill will probably be considered by the full Senate in the near future,[38] and hearings have been held on a similar bill in a House subcommittee.[39] Both would apply at all educational levels, with the Senate bill giving federal district court jurisdiction and the House bill providing for the withdrawal of federal funds.

From a practical point of view, public university students are already assured of equal access (at least if religious groups do not dominate the forum) by virtue of the Supreme Court's decision in *Widmar v. Vincent*.[40] Because the Supreme Court has not considered a similar case arising in lower education, passage of equal access legislation would resolve a growing conflict in the lower federal courts over the applicability of *Widmar*-type reasoning at the high school level[41] and would extend similar protection to elementary school students (when extracurricular forums existed at that level).

While equal access legislation (because of its more obvious free speech component and because of its lesser potential for coercion) can be distinguished from direct and indirect attempts to legislate school prayer, more coercive indirect attempts to re-institute school prayer can be seen in the several so-called court-stripping bills. These types of bills have historically been controversial and are considered by many to be of doubtful constitutionality.[42] Passage of any one of these bills by Congress would thus be only the first step in a controversy with political ramifications far beyond the immediate substance of the proposal.

JUDICIAL RESPONSE TO STATE PRAYER INITIATIVES: 1983

In a complex series of complaints and amended complaints, received and decided by the federal courts in 1982-83, Ishmael Jaffree, on

37. Freund, *Storms Over the Supreme Court*, 69 A.B.A. J. 1474, 1480 (1983).
38. S. 1059, 98th Cong., 1st Sess. (1983).
39. H.R. 2732, 98th Cong., 1st Sess. (1983).
40. 102 S. Ct. 269 (1981).
41. *See, e.g.*, Lubbock Civil Liberties Union v. Lubbock Indep. School Dist., 669 F.2d 1038 (5th Cir. 1982), *cert. denied* 102 S. Ct. 800 (1983); Bender v. Williamsport Area School Dist., 563 F. Supp. 697 (M.D. Pa. 1983). The *Bender* case has been appealed. School Law News, June 17, 1983, at 8.
42. *See, e.g.*, Comment, *supra* note 29 and Freund, *supra* note 37.

behalf of three of his children, sought to limit school prayer activities in Mobile County, Alabama. The issues sought to be resolved by Jaffree included the constitutionality of certain teacher practices in conducting school prayer throughout the 1981-82 school year and of two 1982 Alabama statutes, referred to collectively as the "Alabama Prayer Statutes." Jaffree's complaint was initially severed by the federal district court into two actions, one against local school officials concerning the allegedly offending teacher practices, and one against state education officials involving the Alabama Prayer Statutes.[43] A preliminary injunction was issued on August 9, 1982, enjoining the enforcement of the prayer statutes;[44] but when the companion cases were later dismissed for failure to state a claim upon which relief could be granted, the injunction was dissolved.[45]

Dismissal of these cases, in January of 1983, was based upon the much criticized and later reversed conclusion that "the establishment clause of the first amendment to the United States Constitution does not bar the *states* from establishing a religion."[46] One month later, Justice Powell, in his capacity as Circuit Justice for the Eleventh Circuit, rejected the conclusion of the district court judge that "the United States Supreme Court has erred,"[47] saying that "unless and until this Court reconsiders the foregoing school prayer decisions, they appear to control in this case. In my view, the District Court was obligated to follow them."[48] It was against this background that the Eleventh Circuit Court of Appeals, in May of 1983, decided the once again consolidated cases concerning school prayer in the state of Alabama.

The issue on appeal in the case of *Jaffree v. Wallace*[49] was whether local religious practices and two state statutes violated the first amendment's establishment clause. The religious practices complained of included teacher-led oral recitations of the Lord's Prayer and recitations of three other prayers, all of which included invocations to "God" or "Lord." The two state statutes were permissive in nature and allowed

43. The district court decisions in these cases were handed down on January 14, 1983. Jaffree v. Board of School Comm'rs, 554 F. Supp. 1104 (S.D. Ala. 1983), *rev'd sub. nom.* Jaffree v. Wallace, 705 F.2d 1526 (11th Cir. 1983); Jaffree v. James, 554 F. Supp. 1130 (S.D. Ala. 1983), *rev'd sub. nom.* Jaffree v. Wallace, 705 F.2d 1526 (11th Cir. 1983).

44. Jaffree v. James, 544 F. Supp. 727 (S.D. Ala. 1982), *argued* 554 F. Supp. 1130 (S.D. Ala. 1983), *rev'd sub. nom.* Jaffree v. Wallace, 705 F.2d 1526 (11th Cir. 1983).

45. Jaffree v. James, 554 F. Supp. at 1132.

46. *Id.* (emphasis added). *See also*, Jaffree v. Board of School Comm'rs, 554 F. Supp. at 1128.

47. Jaffree v. Board of School Comm'rs, 103 S. Ct. 842, 843 (1983), *quoting id.*, 554 F. Supp. at 1128.

48. *Id.*

49. Jaffree v. Wallace, 705 F.2d 1526 (11th Cir. 1983).

for one minute of meditation or voluntary prayer and for a teacher-led state-composed "prayer to God." The prayer began: "Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world."[50]

After a brief historical review, the court of appeals reaffirmed that the "*Supreme Court has considered and decided the historical implications surrounding the establishment clause.* The Supreme Court has concluded that it's present interpretation of the first and fourteenth amendments as applying to both federal and state governments is consistent with the historical evidence."[51] Applying the three-part purpose-effect-entanglement test of *Lemon v. Kurtzman*,[52] The court held that teacher-led prayer activity, which is a "quintessential religious practice," cannot have a secular purpose and that it's primary effect was to advance religion.[53] The court also concluded that the prayer statutes had a religious purpose and effect, and therefore remanded the case with an order to enjoin both the practices and the statutes in question.[54]

In another 1983 federal court decision, *Duffy v. Las Cruces Public Schools*,[55] a statute allowing for "a period of silence" to be used for "contemplation, meditation or prayer" was declared violative of the United States Constitution and the Constitution of the State of New Mexico. In addition to the plain language of the statute, which evidenced a legislative purpose to provide for prayer in public schools, the court looked to the historical context in deciding that the addition of the words "contemplation" and "meditation" was "a transparent ruse meant to divert attention from the statute's true purpose."[56] It was the understanding of the General Counsel of the State Department of Education that he was drafting a bill for legislative consideration that "would authorize some form of prayer in our public schools."[57] The court also determined that the legislative purpose coupled with the public's attendant perception of the statute as authorizing religious exercises would have the effect of advancing religion.[58]

The third part of the establishment clause test was also violated because there was evidence of entanglement in the form of political

50. *Id.* at 1528-29.
51. *Id.* at 1533.
52. 403 U.S. 602, 612-13 (1971).
53. Jaffree v. Wallace, 705 F.2d at 1534-35.
54. *Id.* at 1535-37.
55. Duffy v. Las Cruces Pub. Schools, 557 F. Supp. 1013 (D.N.M. 1983).
56. *Id.* at 1019.
57. *Id.* at 1015.
58. *Id.* at 1016-17.

divisiveness. Board members were influenced to favor the implementation of the statute because they perceived that their actions would impact favorably on a bond issue, four teachers had refused to implement the minute of silence, 27 percent of the students were against it, and more teachers disapproved of the provision than favored it.[59] In addition to declaring the statute unconstitutional, the court enjoined any future implementation of its provisions: "This will guarantee that the defendants will not again be pressured into adopting such a program, and insures the integrity of the holding of the court."[60]

Another state which experienced controversy over a moment of silence in 1983 was New Jersey. The case of *May v. Cooperman*[61] involved a challenge to that state's statute requiring that public schools permit a moment of silence for "quiet and private contemplation or introspection."[62] The statute, which was approved by the New Jersey legislature over a veto by Governor Thomas H. Kean, was thought by its supporters to be constitutional because the moment of silence was to be used at the discretion of individual students and because prayer was not mentioned or encouraged in any way.[63] The law was opposed by a number of individuals and groups including the American Baptist Churches of New Jersey, the State Council of Churches, the New Jersey School Boards Assocation, the New Jersey Education Association, and the A.C.L.U.[64] During oral arguments in the case, a professor of theology said that "silence is very much a part of the paraphernalia of religion;" and according to a professor of education, the law is "bad education, and it's bad religion."[65]

A decision in the *May* case was issued by federal district court judge Dickinson R. Debvoise on October 24th, declaring that the law had a "religious purpose," which would "tend to promote divisiveness among and between religious groups" (thereby violating both the purpose and entanglement tests), and an effect which "both advances and inhibits religion."[66] The decision illustrates the increasing tendency of federal courts to look beyond the explicit meaning of statutory language to the historical and contemporary context that produced the statute and to its connotations.

Other cases concerning school prayer, which were unreported or yet to be reported in October of 1983, include *Crockett v. Sorenson*[67]

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59. *Id.* at 1017.
60. *Id.* at 1023.
61. May v. Cooperman, No. 83-89, __ F. Supp. __ (D.N.J. 1983).
62. N.Y. Times, Sept. 18, 1983, at 6E, col. 1.
63. *Id.*, *see also*, Education Week, Sept. 21, 1983, at 5, col. 4.
64. Education Daily, Sept. 28, 1983, at 5, col. 1.
65. *Id.*
66. N.Y. Times, Oct. 25, 1983, at B2, col. 5. *See also id.* at 1, col. 2.
67. Crockett v. Sorenson, __ F. Supp. __ (W.D. Va. 1983).

where a federal district court in Virginia held that a fourth and fifth grade Bible class program which included prayers and hymns, violated the establishment clause of the Constitution. The major problem with the program, according to the judge, was that it was conducted by outside religious organizations on school property. The ruling stated that the classes could be reinstituted on a voluntary basis if the school controlled the course content, if regular certified teachers taught the classes, and if there was no attempt at religious indoctrination.[68]

A Georgia federal district court and a California court of appeals also prohibited other religious practices in 1983. In June, a federal district court in Georgia issued a ruling prohibiting religious assemblies, the posting of religious notices on school bulletin boards, and the posting of church signs on school property. Also prohibited in *Nartowicz v. Clayton County School District* was the recognition of a junior high school Youth for Christ Club.[69] In June, just before graduation, a California state court enjoined graduation prayers at two high schools in Livermore, California. The injunction issued in *Bennett v. Livermore* was upheld by a state court of appeals, which said that the practice violated both the state and federal constitutions.[70]

In addition to efforts by state legislators and state and local education officials to institute avowedly religious or quasi-religious practices in public schools, controversy continued in 1983 regarding the constitutionality of equal access for voluntary religious groups. The higher education case of *Widmar v. Vincent* (1981),[71] where the Supreme Court mandated equal access to a university forum based upon freedom of speech principles, had already had an impact on cases arising in lower education.

In the case of *Bender v. Williamsport Area School District* (1983),[72] a federal district court in Pennsylvania, closely following the reasoning of the *Widmar* case, held that a voluntary religious group must be permitted to meet in the semi-public forum of a a regular high school activity period. In contrast, the Supreme Court in 1983 denied certiorari in the earlier case of *Lubbock Civil Liberties Union v. Lubbock Independent School District,*[73] where the Fifth Circuit had concluded that a school board policy permitting equal access for voluntary

68. Educ. Week, Aug. 17, 1983, at 9, col. 3.
69. Nartowicz v. Clayton Cty. School Dist., No. C83-1A (__ D. Va. 1983).
70. Bennett v. Livermore, ____ (Cal. Ct. App. 1983). Reported in School Law News, June 17, 1983, at 7.
71. Widmar v. Vincent, 102 S. Ct. 269 (1981).
72. Bender v. Williamsport Area School Dist., 563 F. Supp. 697 (M.D. Pa. 1983).
73. Lubbock Civil Liberties Union v. Lubbock Indep. School Dist., 669 F.2d 1038 (5th Cir. 1982), *cert. denied*, 102 S. Ct. 800 (1983).

religious groups was unconstitutional, in part, because it was contained within a broader policy concerned with the place of religious activities in public schools. Even the *Lubbock* case elicited differing opinions, however, with the federal district court initially ruling in favor of the student group and four out of eleven circuit judges dissenting from a denial of rehearing.[74]

The equal access question is likely to become even more prominent in 1984 than it was in 1983. The second session of the 98th Congress (1984) may bring passage of equal access legislation, and there will be additional judicial activity with the appeal of the *Bender* case.[75] The clearly distinguishable efforts to bring prayer back into the classroom, whether in audible or silent form, face mounting opposition at both the federal and state levels. An indication of this can be seen in the array of religious groups opposed to a moment of silence (surely the least controversial of such measures) in the state of New Jersey. There is little reason to believe that the conflagration ignited by the Supreme Court more than twenty years ago will die out soon or that efforts to define "benevolent neutrality" will cease. Although 1983 brought increased attention to the relatively new equal access issue, the complex problems suggested by the deceptively simple question "Shall we pray?" will remain in 1984.

74. *Id.*, 680 F.2d 424 (5th Cir. 1982), *denying reh'g* to Lubbock, 669 F.2d 1038.
75. School Law News, June 17, 1985, at 8.